

# BOARD OF COUNTY COMMISSIONERS

## AGENDA ITEM SUMMARY

Meeting Date: June 18, 2003

Division: Growth Management

Bulk Item: Yes      No X

Department: Planning

**AGENDA ITEM WORDING:** First of two public hearings to designate Tier map boundaries and adopt an Interim Development Ordinance deferring ROGO and NROGO allocations in Tier I and Tier II until amendments to the 2010 Comprehensive Plan and Land Development Regulations implementing the Work Program mandated by Rule 28-20, F.A.C. are complete and adopted or eighteen months, whichever comes first.

**ITEM BACKGROUND:** The Planning Commission, after spending several months reviewing the staff sponsored Tier Maps, prepared as a first step in implementing Goal 105 of the Comprehensive Plan, Rule 28-20, F.A.C. and the Florida Keys Carrying Capacity Study FKCCS, became concerned that ROGO and NROGO allocations were being awarded in inappropriate areas. The Planning Commission and staff are currently working on amendments to ROGO, NROGO and other sections of the Code and Plan.

**PREVIOUS RELEVANT BOCC ACTION:** The Board adopted Goal 105, "Smart Growth" to provide a framework with the 2010 Comprehensive Plan to implement the FKCCS.

**CONTRACT/AGREEMENT CHANGES:**

None

**STAFF RECOMMENDATIONS:**

Approval

**TOTAL COST:** NA

**BUDGETED:** Yes NA No     

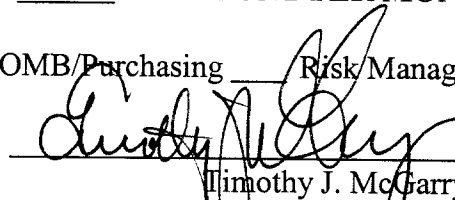
**COST TO COUNTY:** NA

**SOURCE OF FUNDS** NA

**REVENUE PRODUCING:** Yes NA No      **AMOUNT PER MONTH**      **Year**     

**APPROVED BY:** County Atty X OMB/Purchasing      Risk Management     

**DIVISION DIRECTOR APPROVAL:**

  
Timothy J. McGarry, AICP

**DOCUMENTATION:** Included X To Follow      Not Required     

**DISPOSITION:**     

**AGENDA ITEM #** 24

Interim Development Ordinance

Designating Tier Map Boundaries and  
Deferring ROGO and NROGO allocations in  
Tier I and Tier II Areas

BOARD OF COUNTY COMMISSIONERS  
MARATHON GOVERNMENT CENTER  
JUNE 18, 2003

## Proposed Interim Development Ordinance

The Ordinance designates the boundaries described in the attached maps as Tier I, Tier II and Tier III and defers ROGO and NROGO allocations within the boundaries of Tier I and Tier II until eighteen months have passed or till amendments to the 2010 Comprehensive Plan and the Land Development Regulations are adopted, whichever comes first.

### Contents

1. Summary Sheet
2. Draft Ordinance
3. Legal Review - Tyson Smith, AICP, J.D. for Freilich, Leitner & Carlisle
4. Staff Report
  - Staff Memo
  - Questions and Answers – The Tier System
  - Staff Report titled “Implementing Goal 105 and the Carrying Capacity Study”
5. Planning Commission Resolution
6. Development Review Committee Resolution

### **Recommendations**

Staff:	<b>Approval</b>	April 9, 2003	Staff Report
DRC:	<b>Approval</b>	April 14, 2003	Resolution #D9-03
PC:	<b>Approval</b>	May 7, 2003	Resolution # P26-03

## DRAFT ORDINANCE

## **ORDINANCE NO.**

AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS DESIGNATING TIER MAPS AND ADOPTING INTERIM DEVELOPMENT REGULATIONS DEFERRING ROGO AND NROGO ALLOCATIONS IN TIER I AND TIER II AREAS UNTIL LAND DEVELOPMENT REGULATIONS AND COMPREHENSIVE PLAN AMENDMENTS IMPLEMENTING THE WORK PROGRAM MANDATED BY RULE 28-20.100, F.A.C. ARE DRAFTED AND ADOPTED BY THE COUNTY COMMISSION OR EIGHTEEN MONTHS, WHICHEVER COMES FIRST.

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**WHEREAS**, the Florida Administrative Commission in 1996 enacted Rule 28-20.100, which created the "Work Program" in the 2010 Comprehensive Plan and mandated, among other things, the preparation of a Carrying Capacity Study for the Florida Keys; and

**WHEREAS**, Year 6 (July 13, 2002 through July 12, 2003) of the "Work Program, section C., mandates that the County implement the Carrying Capacity Study by the adoption of all necessary plan amendments to establish development standards to ensure that new development does not exceed the carrying capacity of the County's natural environment; and

**WHEREAS**, the "Work Program", section F. mandates that the County initiate and complete a collaborative process for the adoption of Land Development Regulations (LDR) and Comprehensive Plan amendments to strengthen the protection of terrestrial habitat; and

**WHEREAS**, the Florida Keys Carrying Capacity Study (FKCCS), completed in September 2002, sets out guidelines that, *inter alia*, would direct future development away from "native habitat," and into "areas ripe for redevelopment or already disturbed"; and

**WHEREAS**, Goal 105, "Smart Growth," was adopted by the Board of County Commissioners in 2001 to implement the mandate of Rule 28-20.100, F.A.C. and to provide a framework within the 2010 Comprehensive Plan to implement the FKCCS; and

**WHEREAS**, Objective 105.2 of the 2010 Comprehensive Plan, which implements Rule 28-20.100, F.A.C., directs the County to map and designate land within the Florida Keys into three categories - Natural Area, Transition and Sprawl Reduction area, and Infill Area, based on the Smart Growth principles set forth therein; and

**WHEREAS**, the Tier Maps were drafted based on the requirements and scientific findings of the FKCCS, Rule 28-20.100, F.A.C., and Goal 105 of the 2010 Comprehensive Plan; and

**WHEREAS**, the draft Tier Maps were reviewed at public workshops in the upper Keys on January 21, in the lower Keys on February 6, 2003, and at Planning Commission meetings; and

**WHEREAS**, revisions have been made to the draft Tier Maps based on public input, further analysis, and site investigations; and

**WHEREAS**, Tiers I and II include those lands of critical environmental sensitivity and those transitional lands that are critical to the County's ability to implement the Smart Growth policies set forth in Goal 105 of the 2010 Comprehensive Plan and the FKCCS; and

**WHEREAS**, Tier III includes those lands already substantially developed and that are most appropriate for continued redevelopment and infill as specified in Goal 105 of the 2010 Comprehensive Plan and the FKCCS; and

**WHEREAS**, the projected number of ROGO and NROGO allocations that will continue to be issued in Tier III will maintain a sustainable environment and will be consistent in number and location with Goal 105 of the 2010 Comprehensive Plan and the FKCCS; and

**WHEREAS**, continued issuance of ROGO and NROGO allocations within Tiers I and II prior to the completion of a comprehensive planning process will result in the loss of valuable native habitat and may have an irreversible detrimental impact on the County's ability to implement the Smart Growth policies set forth in Goal 105 of the 2010 Comprehensive Plan, Rule 28-20.100, F.A.C., and the FKCCS; and

**WHEREAS**, in order to make effective Goal 105 of the 2010 Comprehensive Plan, Rule 28-20.100, F.A.C., and the FKCCS, it is necessary to halt temporarily works of development as provided herein which might otherwise absorb the entire capacity of the County for further development or direct it out of harmony with the Comprehensive Plan and the FKCCS; and

**WHEREAS**, the County has committed necessary staff and resources to the development of permanent policies and regulations to implement Goal 105 of the 2010 Comprehensive Plan, Rule 28-20.100, F.A.C., and the FKCCS, in order to facilitate its diligent and good faith effort to establish permanent policies and regulations within a reasonable period of time; and

**WHEREAS**, implementation of Goal 105 of the Comprehensive Plan, Rule 28-20.100, F.A.C., and the FKCCS involves complex environmental, social, and economic issues, a broad geographic scope, numerous governmental agencies, and a diversity of stakeholder interests; and

**WHEREAS**, these Interim Development Regulations serve compelling state and regional governmental interests and are the minimum necessary to protect the health, safety, and general welfare of the citizens of Monroe County and effectuate Goal 105 of the Comprehensive Plan, Rule 28-20.100, F.A.C., and the state-mandated FKCCS; and

**WHEREAS**, these Interim Development Regulations are necessary to derive the benefits of permitting democratic discussion and participation by citizens, developers, and property

owners who may be affected by eventual amendments to the Land Development Regulations and Comprehensive Plan; and

**WHEREAS**, the Board of County Commissioners has considered, *inter alia*, the FKCCS, Rule 28-20.100, F.A.C., Goal 105 of the 2010 Comprehensive Plan, and the staff report titled "Implementing Goal 105 and the Carrying Capacity Study," which describes the basis of the Smart Growth program to be implemented by these Interim Development Regulations and other permanent Comprehensive Plan policies, maps, and Land Development Regulations that will be developed as appropriate; and

**WHEREAS**, given the scope of the issues and areas to be addressed by Goal 105 of the 2010 Comprehensive Plan and the FKCCS, the eighteen- to twenty-four-month timeframe is necessary and reasonable in order to complete a fair and comprehensive planning and public participation process that results in legally- and scientifically-sound policies and regulations; and

**WHEREAS**, the LDR and Comprehensive Plan amendments to implement the protection of the terrestrial ecosystem requirements in Rule 28-20.100 are incomplete and will not be prepared and adopted by the July 13, 2003 deadline set forth therein; and

**WHEREAS**, the Planning Commission at a regular meeting on March 12, 2003, directed staff to move forward and prepare a recommendation to the Board of County Commissioners for a deferral of ROGO and NROGO allocations, while staff prepares amendments to the 2010 Comprehensive Plan and the LDRs to further protect the terrestrial ecosystem; and

**WHEREAS**, upon the direction by the Planning Commission, Growth Management Division staff immediately undertook the development of these Interim Regulations, a draft of which was presented to and discussed by the Planning Commission on April 9, 2003; and

**WHEREAS**, at its regular meetings in March, April, and May, 2003 the Board of County Commissioners was updated by County staff with regard to the status of these Interim Regulations; and

**WHEREAS**, this temporary deferment will be a demonstration of good faith to the Governor and Cabinet that the county is seriously working towards implementing the FKCCS and Rule 28-20.100, F.A.C. and should be considered in substantial compliance in meeting the Work Program goals; and

**WHEREAS**, Chapter 125, F.S., authorizes the Board of County Commissioners to adopt ordinances to provide standards protecting the health, safety, and welfare of the citizens of Monroe County; and

**WHEREAS**, these Interim Development Regulations constitute a valid exercise of the County's police power and are otherwise consistent with Section 163.3161, *et seq.*, F.S., which, *inter alia*, encourages the use of innovative land development regulations including provisions like moratoria to implement the adopted comprehensive plan; and

**WHEREAS**, the purpose and intent of these Interim Development Regulations is to create a system of development rights and land uses that will implement the FKCCS, Rule 28-20.100, F.A.C., and Goal 105 of the 2010 Comprehensive Plan and ameliorate the economic impacts on private property owners; and

**WHEREAS**, the Planning Commission reviewed the Interim Development Ordinance in public hearing on May 7, 2003, and recommends approval to the Board of County Commissioners;

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA:**

**Section 1:** Pursuant to Policy 105.2.1, Year 2010 Comprehensive Plan, Natural Areas (Tier I), Transition Areas (Tier II), and Infill Areas (Tier III) are hereby designated, the boundaries, which are described in the following maps, attached hereto, are made part of this ordinance. During the period these interim development regulations are in effect, boundaries may be amended by ordinance of the Board of County Commissioners upon the recommendation of the Planning Commission based upon data and considerations used originally to draft the Tier Maps. This shall not be construed to foreclose changes or additions to the original criteria used to determine the Tiers.

**Section 2:** Pursuant to its lawfully delegated authorities and the pending legislation doctrine set forth in *Smith vs. City of Clearwater* 383 So. 2d 681 (FL, 2nd DCA, 1980) the Board of County Commissioners establishes the interim development regulations set forth in this Ordinance, which shall remain in full force and effect until either amendments to the Year 2010 Comprehensive Plan and Land Development Regulations are drafted and adopted by the County Commissioners to implement the Florida Keys Carrying Capacity Study and Goal 105 of the 2010 Comprehensive Plan or eighteen months from the date of the adoption of this Ordinance, whichever comes first. Prior to the eighteen-month sunset date of this ordinance, the Board of County Commissioners, upon the recommendation of the Planning Commission, may amend this ordinance to extend its provisions an additional six months.

**Section 3:** No Rate of Growth Ordinance allocation awards shall be made on any applications for either residential (ROGO) or non residential (NROGO) development within Tier I or Tier II areas with a ROGO/NROGO entry date of April 13, 2003 or later.

**Section 4:** As of the effective date of this Ordinance, no further ROGO or NROGO allocation applications within Tier I and Tier II areas shall be accepted or processed by the Growth Management Division.

**Section 5:** Any use that does not require either a ROGO or NROGO allocation award, and that is allowed pursuant to the Monroe County Land Development Regulations and the 2010 Comprehensive Plan, may be continued or established within Tiers I, II, and III at anytime.



**Section 6:** All buildable vacant lands within Tier I and Tier II areas shall be eligible to qualify for ROGO and NROGO land dedication points under Section 9.5.122.3(a)(5) and Section 9.5.124.8(a)(3), Monroe County Code, effective the date of this ordinance.

**Section 7:** The County Administrator is directed to have the Growth Management Division to begin immediately preparing the draft text and map amendments and other supporting studies in cooperation with the Planning Commission in order to effectuate the provisions of Goal 105 of the 2010 Comprehensive Plan, Rule 28-20.100, F.A.C., and the FKCCS within the timeframes set forth herein.

**Section 8:** If any section, subsection, sentence, clause, item, change or provision of this ordinance is held invalid, the remainder shall not be affected by such invalidity.

**Section 9:** All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of said conflict.

**Section 10:** The ordinance is hereby transmitted to the Florida Department of Community Affairs pursuant to Chapters 163 and 380, Florida Statutes.

**Section 11:** This ordinance shall be filed in the Office of the Secretary of State of the State of Florida, but shall not become effective until a notice is issued by the Department of Community Affairs or Administration Commission finding the amendment in compliance with Chapter 163 and 380, Florida Statutes.

**Section 12:** This Ordinance shall stand repealed as of 11:59 p.m. on the five hundred forty seventh day after the adoption of this Ordinance, unless repealed sooner or extended pursuant to the terms set forth herein.

[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK.]

**PASSED AND ADOPTED** by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2003.

Mayor Dixie Spehar \_\_\_\_\_

Mayor Pro Tem Murray Nelson \_\_\_\_\_

Commissioner Charles "Sonny" McCoy \_\_\_\_\_

Commissioner George Neugent \_\_\_\_\_

Commissioner David Rice \_\_\_\_\_

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

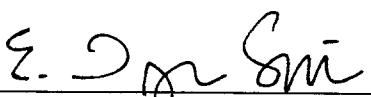
BY \_\_\_\_\_  
Mayor Dixie Spehar

(SEAL)

ATTEST: DANNY L. KOLHAGE, CLERK

\_\_\_\_\_  
Deputy Clerk

Approved as to form and legal sufficiency:

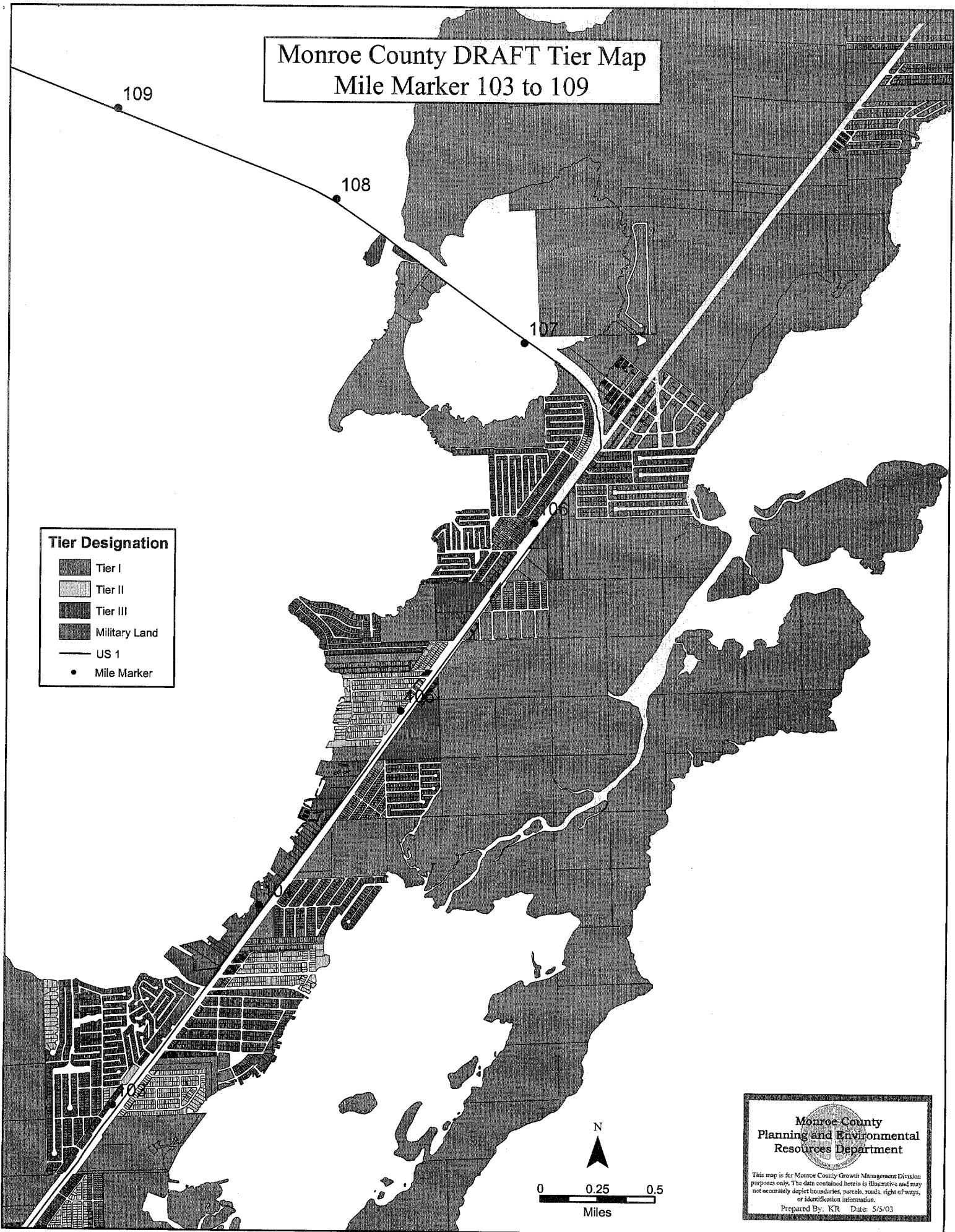
  
\_\_\_\_\_  
E. Tyson Smith, Esq.

ATTACHMENT TO  
ORDINANCE NO. \_\_\_\_\_-2003  
MONROE COUNTY  
TIER MAPS

# Monroe County DRAFT Tier Map Mile Marker 103 to 109

## Tier Designation

- Tier I
- Tier II
- Tier III
- Military Land
- US 1
- Mile Marker









Monroe County  
Planning and Environmental  
Resources Department

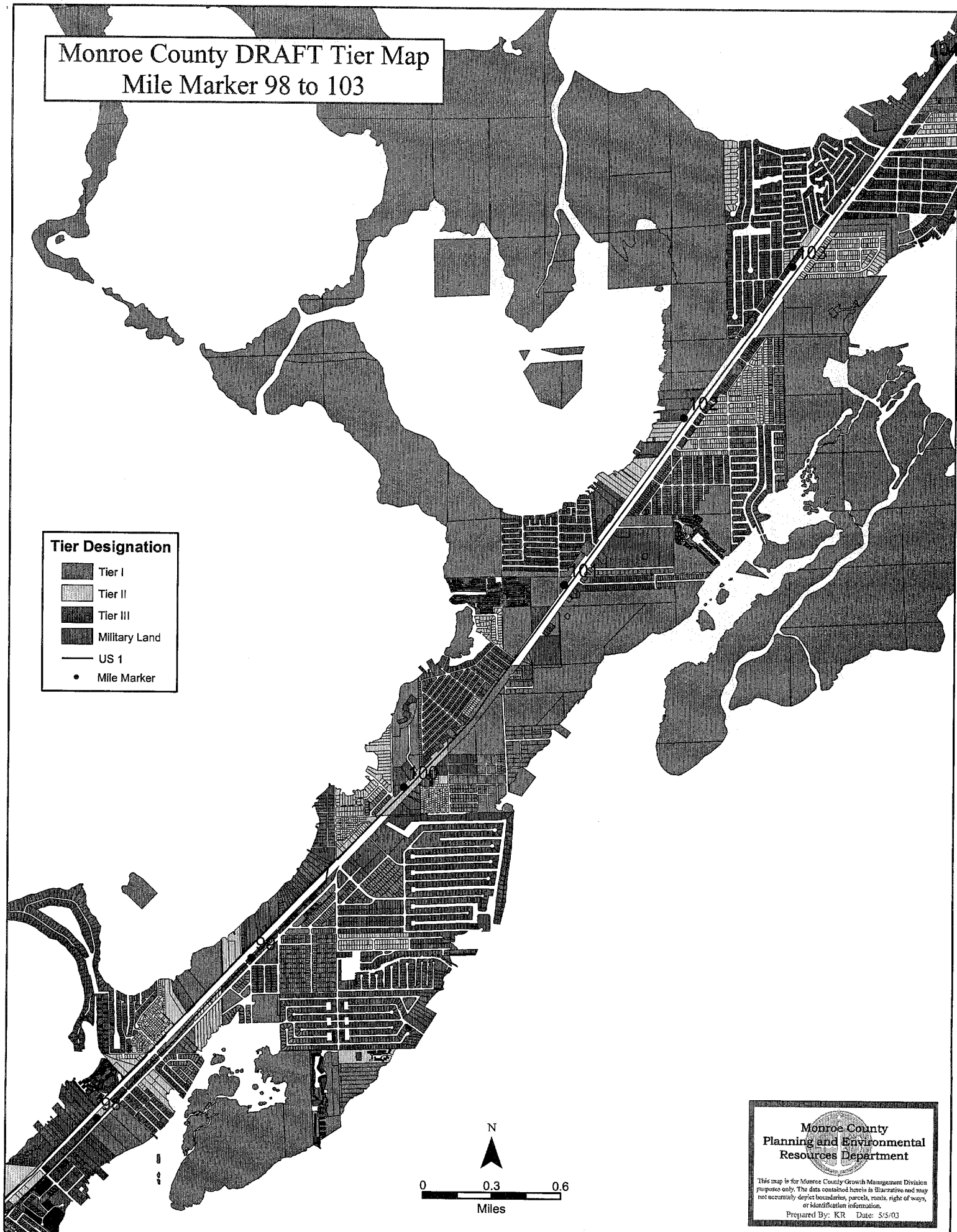
This map is for Monroe County Growth Management Division purposes only. The data contained herein is illustrative and may not accurately depict boundaries, parcels, roads, right of ways, or identification information.

Prepared By: KR Date: 5/5/03

# Monroe County DRAFT Tier Map Mile Marker 98 to 103

## Tier Designation

-  Tier I
-  Tier II
-  Tier III
-  Military Land
-  US 1
-  Mile Marker









Monroe County  
Planning and Environmental  
Resources Department

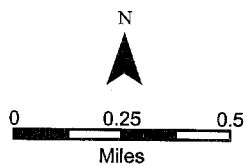
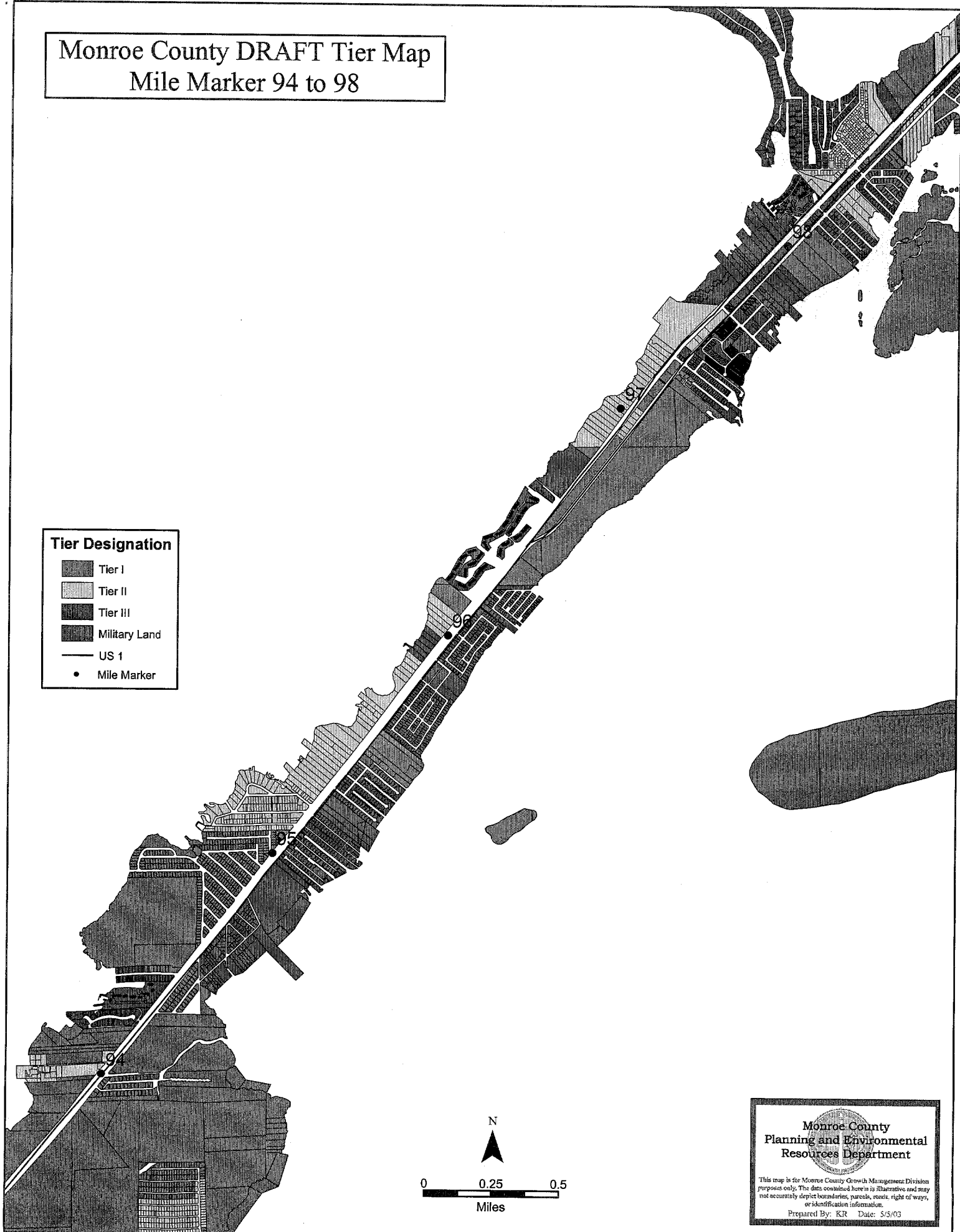
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Prepared By: KR Date: 5/5/03

# Monroe County DRAFT Tier Map Mile Marker 94 to 98

## Tier Designation

-  Tier I
-  Tier II
-  Tier III
-  Military Land
-  US 1
-  Mile Marker



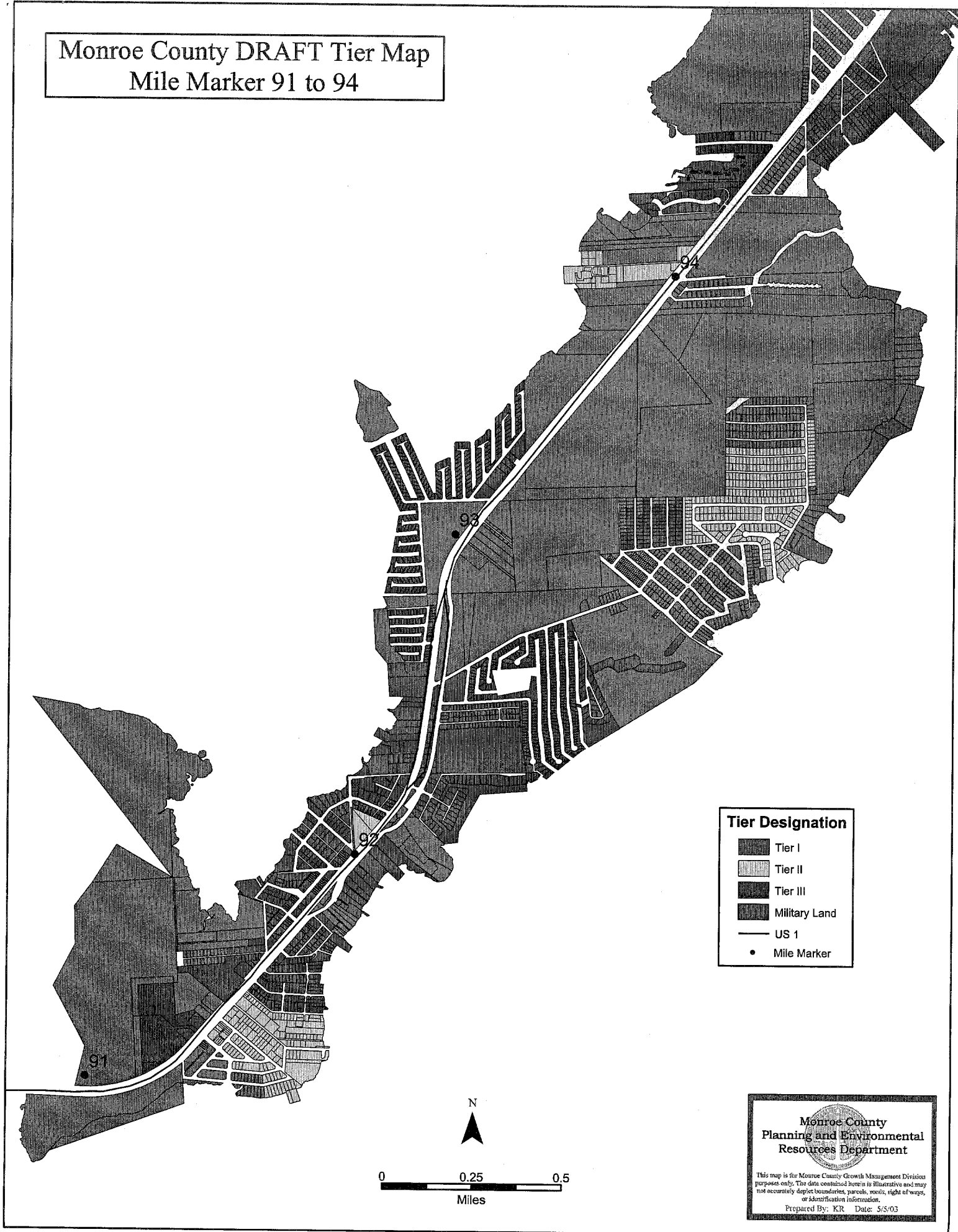
Monroe County  
Planning and Environmental  
Resources Department

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Prepared By: KR Date: 5/5/03



# Monroe County DRAFT Tier Map Mile Marker 91 to 94



**Tier Designation**

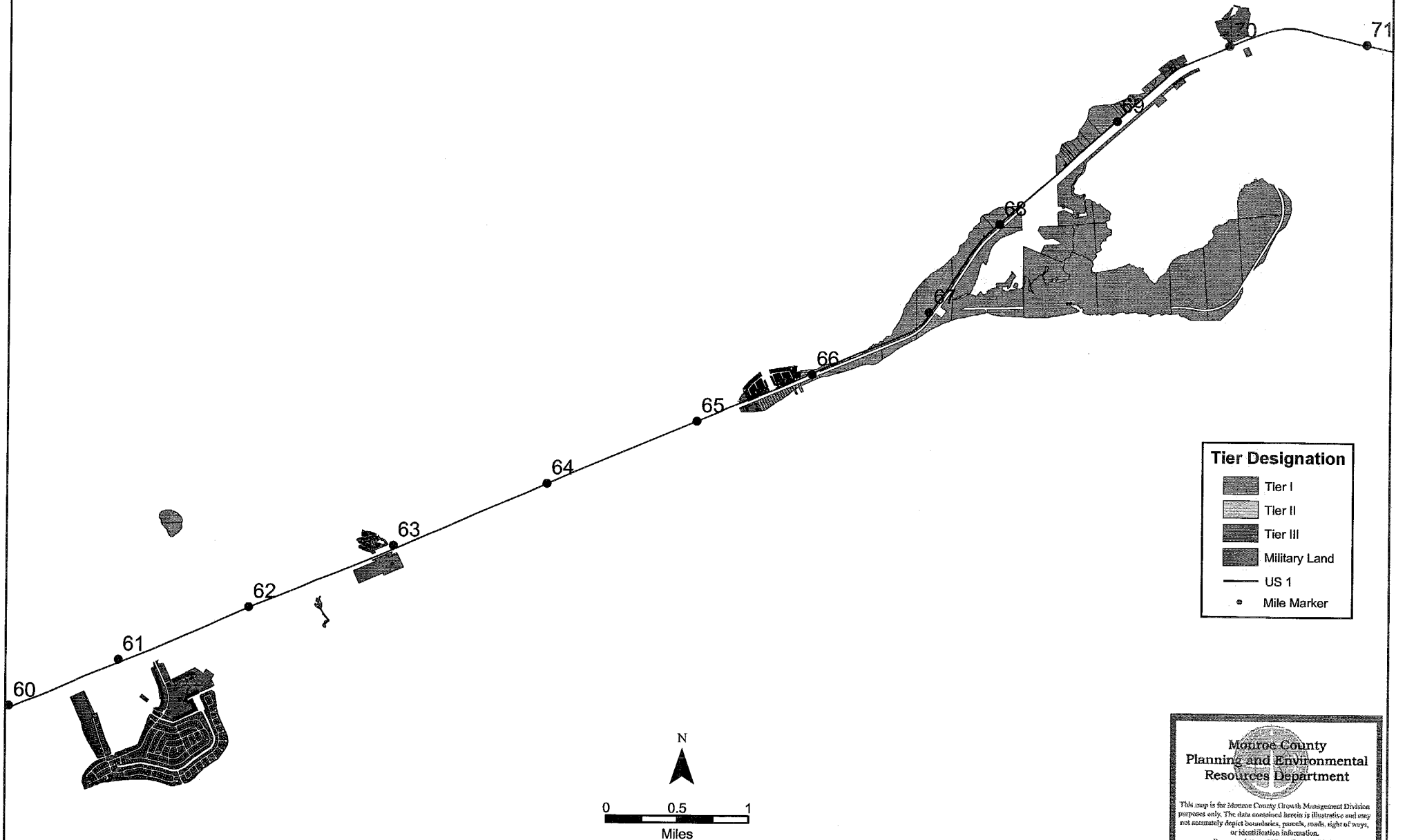
- Tier I
- Tier II
- Tier III
- Military Land
- US 1
- Mile Marker

**Monroe County  
Planning and Environmental  
Resources Department**

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Prepared By: KJR Date: 5/5/03

# Monroe County DRAFT Tier Map Mile Marker 60 to 71



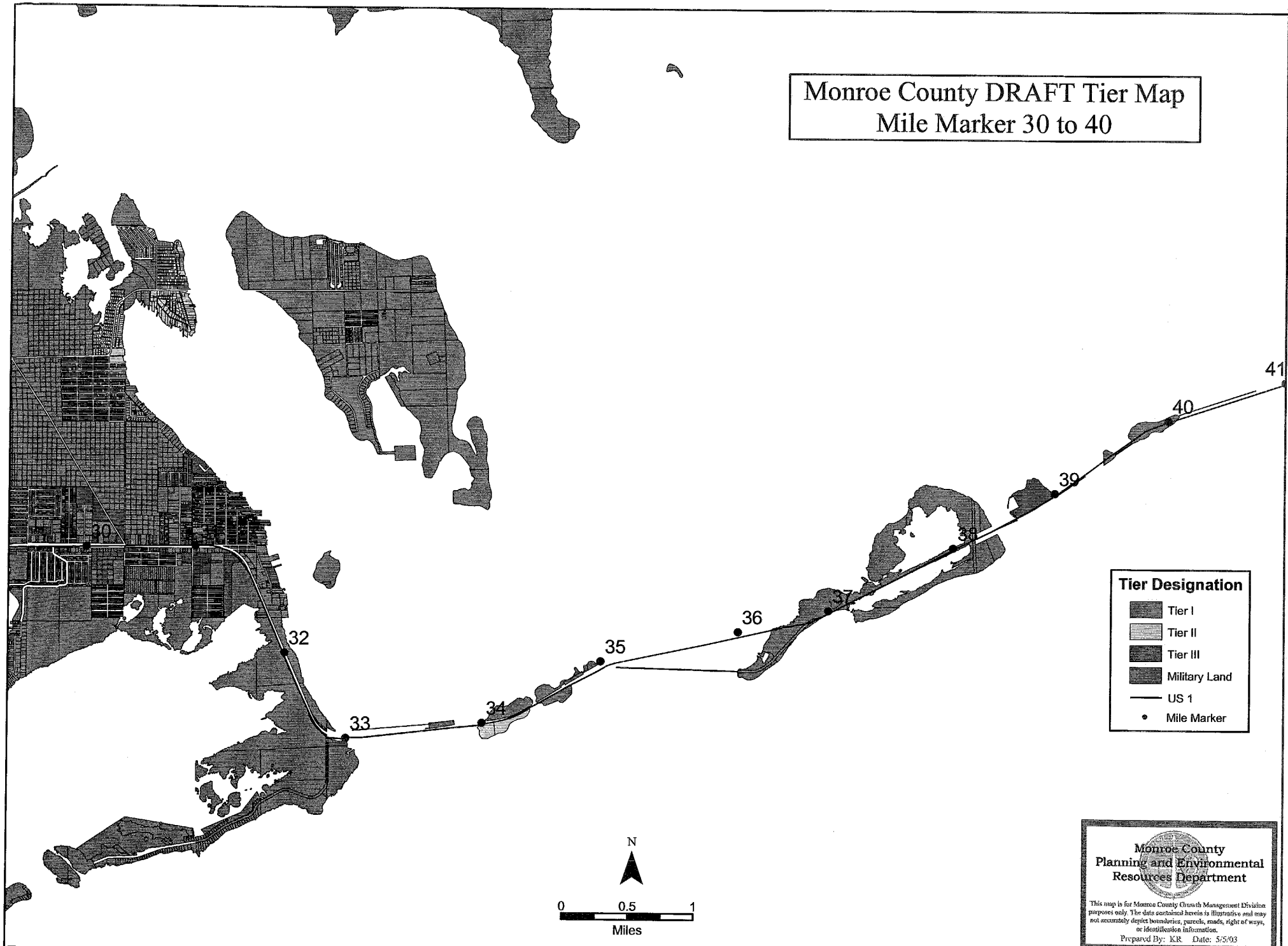
Monroe County  
Planning and Environmental  
Resources Department

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Prepared By: K.R. Date: 5/5/03



Monroe County DRAFT Tier Map  
Mile Marker 30 to 40



**Tier Designation**

- Tier I
- Tier II
- Tier III
- Military Land
- US 1
- Mile Marker







Monroe County  
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Resources Department

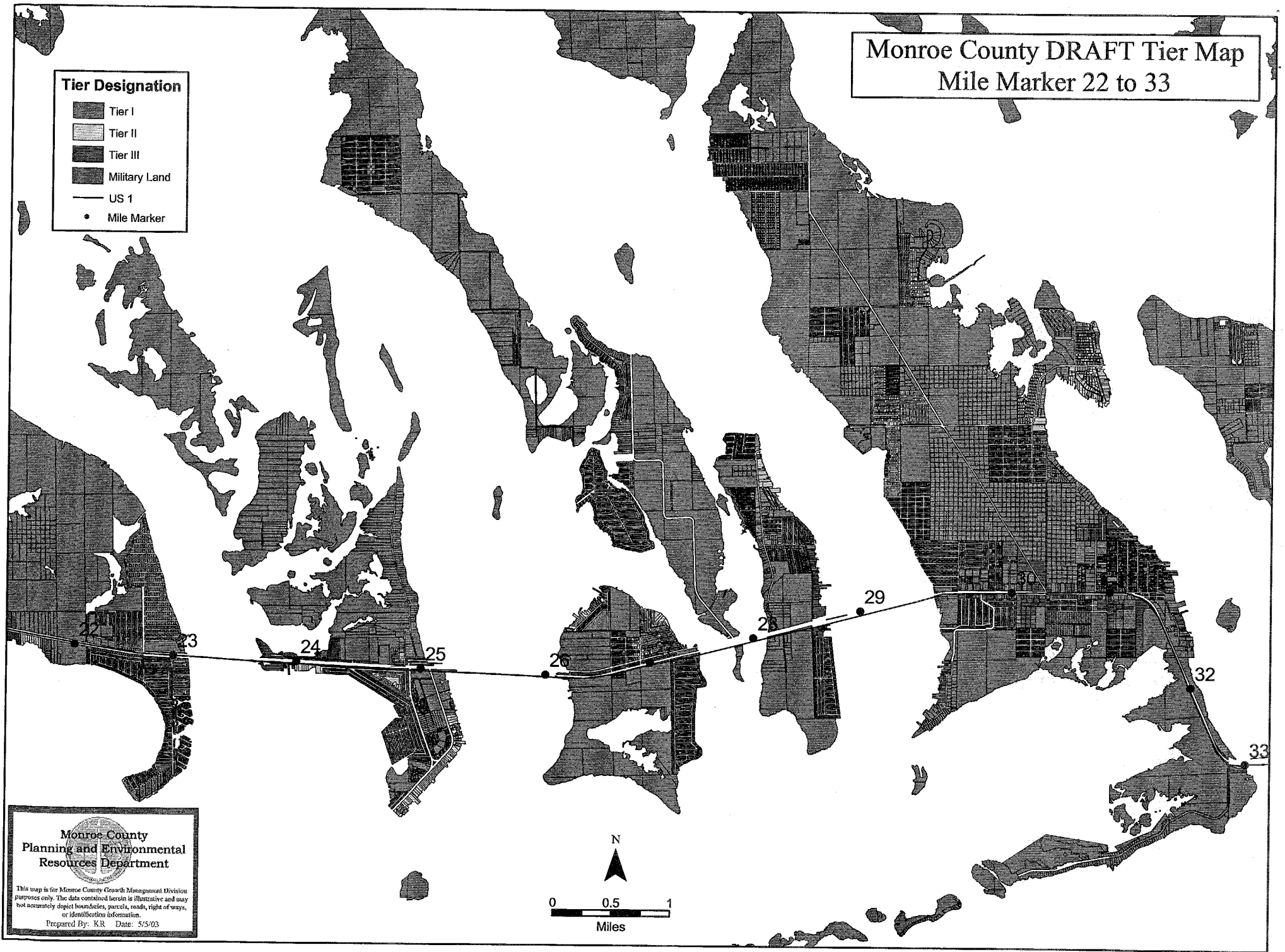
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Prepared By: KR Date: 5/5/03

# Monroe County DRAFT Tier Map Mile Marker 22 to 33

## Tier Designation

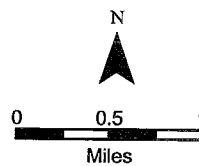
-  Tier I
-  Tier II
-  Tier III
-  Military Land
-  US 1
-  Mile Marker



Monroe County  
Planning and Environmental  
Resources Department







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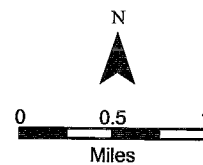
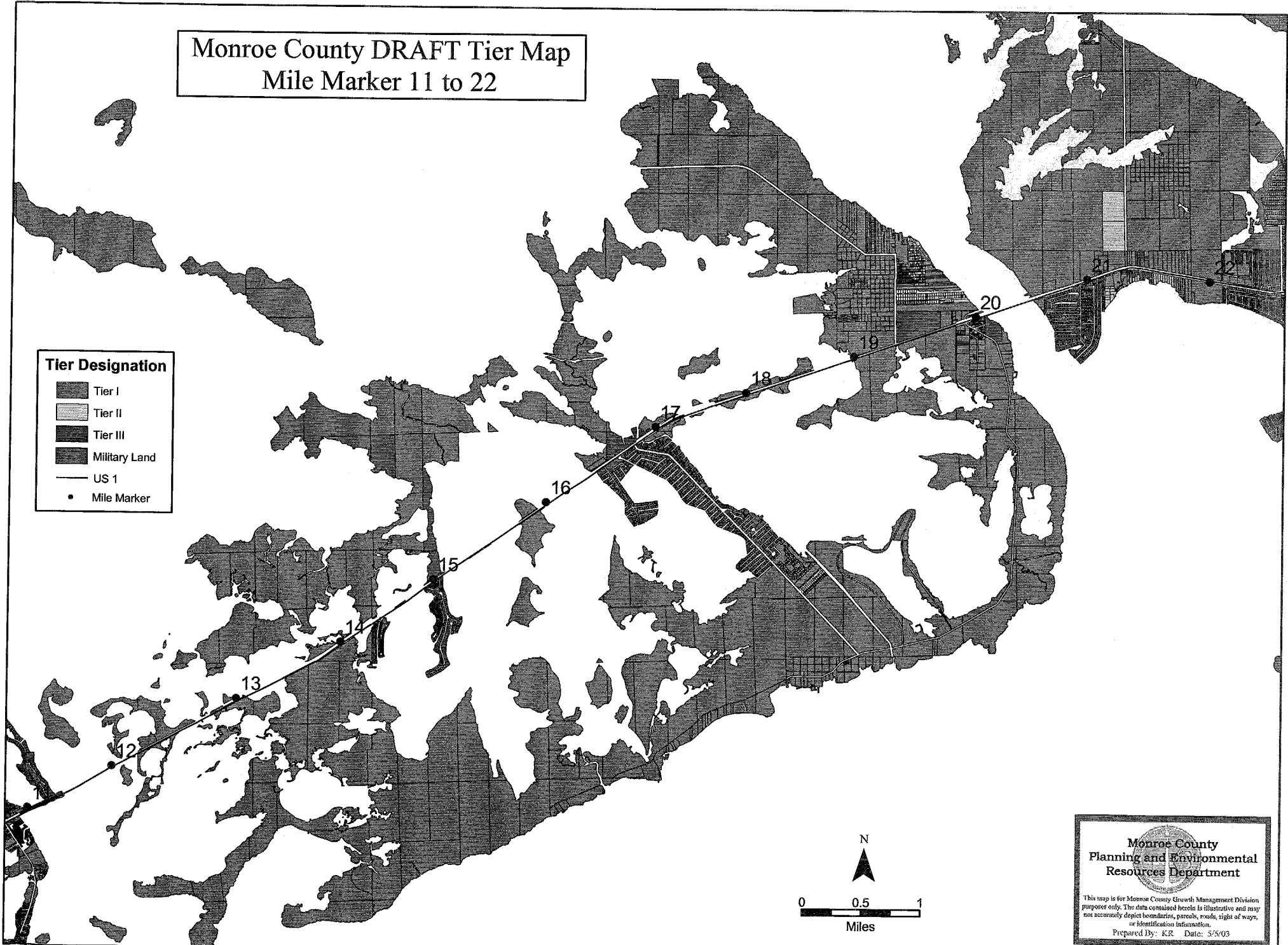
Prepared By: KR Date: 5/5/03



# Monroe County DRAFT Tier Map Mile Marker 11 to 22

## Tier Designation

-  Tier I
-  Tier II
-  Tier III
-  Military Land
-  US 1
-  Mile Marker



**Monroe County**  
Planning and Environmental  
Resources Department

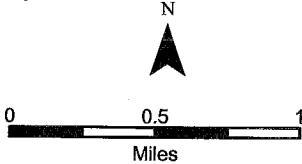
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Prepared By: KR Date: 5/8/03

# Monroe County DRAFT Tier Map Mile Marker 4 to 11

**Tier Designation**

- Tier I
- Tier II
- Tier III
- Military Land
- US 1
- Mile Marker



**Monroe County  
Planning and Environmental  
Resources Department**

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Prepared By: KR Date: 5/5/03